THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 18984 of 2004

DATED: 14-11-2005

Between:

G.Madhusudhan Reddy .. Petitioner

And

G.Srinivas Reddy and another .. Respondents

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 18984 OF 2004

ORDER:

Heard. Sri Bankatlal Mandhani, learned counsel for the petitioner and Sri P.Prabhakar Rao, learned counsel for the first respondent-workman have requested that the writ petition itself is disposed of.

The writ petitioner is the first respondent in M.P.No.55 of 2002 on the file of Labour Court, Warangal, being an application filed by the first respondent herein under Section 33 (C)(ii) of the Industrial Disputes Act, 1947 (for short

the Act) seeking payment of arrears of bonus and other reliefs from the writ petitioner on the basis of a claim that there is an employer employee relationship between the petitioner and the respondent herein. In the said proceedings, the writ petitioner filed I.A.No.296 of 2003 seeking determination as a preliminary issue the question whether there was an employer-employee relationship between himself and the first respondent herein. The writ petitioner pleaded that the first respondent herein is his own brother and was allowed to look after the business in his absence, but was never an employee. The writ petitioner also contended that contract works were obtained in his name from the KTPS and that he had never employed the first respondent herein. It was also pleaded that the first respondent not being an employee was not entitled to file an application under Section 33 (C) (ii) of the Act seeking the benefits claimed. On the basis of these pleas the writ petitioner sought determination as a preliminary issue, the existence of an employer-employee relationship between himself and the first respondent. The Labour Court, Warangal rejected I.A.No.96 of 2003 by recording that the substantive M.P.No.55 of 2002 was filed on 12.12.2002, I.A.No.296 of 2003 was filed by the petitioner herein on 19.08.2003, after lapse of 8 months, whereas the response ought to have been filed within a month and that the writ petitioner was protracting the adjudication of M.P.No.55 of 2002. The Court below also recorded that the fact whether the first respondent herein is an employee of the writ petitioner could be decided after recording all the evidence and that the point involved in the preliminary issue ought to be gone in to only as a part of the substantive adjudication of M.P.No.55 of 2002. On the above reasons the Court below rejected the I.A.No.296 of 2002.

The learned counsel for the petitioner relies on **MUNICIPAL CORPORATION OF DELHI v GANESH RAZAK AND ANOTHER** , **TARA AND OTHERS v DIRECTOR, SOCIAL WELFARE AND OTHERS AND MILAN CINEMA ANDANOTHER v MAGANLAL NATHALAL MISTRY,** in support of his contention that the jurisdiction of the Labour Court under Section 33 (C) (ii) of the Act is limited in scope and does not extend to adjudication of disputes as to the very entitlement to the benefits claimed. The broad principle is not in dispute. The question is what is the time and occasion for considering the issue. The Court below held that the question whether the first respondent

herein was an employee of the writ petitioner could be considered at the hearing of the main application under Section 33 (C)(ii) of the Act and ought not to be considered as a preliminary issue. If there is a serious dispute as to the relationship and not a mere facile dispute raised for the purpose of avoiding the jurisdiction of the Labour Court under Section 33(C)(ii) of the Act, the Labour Court ought not to determine such disputed status of employer-employee relationship, in an application under Section 33 (C)(ii) of the Act, but that an aspect that the Labour Court is entitled to go into even while adjudicating upon the first respondent's claim under Section 33 (C)(ii) of the Act. The Labour Court has by impugned order merely declined the petitioner's insistence that the aspect be determined as a preliminary issue. The rejection of the petitioner's claim in I.A.No.296 of 2003 is in harmony with the established principle of Industrial adjudication that determination as preliminary issues should be avoided so as to ensure expeditious adjudication of the substantive disputes.

This Court finds no error in the application of law or exercise of discretion by the Court below, warranting interference. The writ petition is without merits and is accordingly dismissed. No costs.

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14-11-2005

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